

1 If you were to look in our product literature, you'd
2 see that another album was coming. And we also worked
3 with a screenwriter, and we worked with -- did more
4 artistic development of the characters. So there was
5 ongoing creative work being done. And then we had
6 another whole series for young kids that we did called
7 The Mirror Kids. So Gloryvision has, you know, quite a
8 number of things, artistic properties, we're working
9 on.

10 Q And is Gloryvision involved with the sales of
11 any products outside of the Songs for Dogs and Songs
12 for Cats?

13 A We're not currently selling anything.

14 Q And has Gloryvision ever sold anything other
15 than Songs for Dogs and Songs for Cats?

16 A Yes, The Mirror Kids. I think we sold The
17 Mirror Kids. No, we developed a pilot on The Mirror
18 Kids is what we did.

19 Q And was there any sales or --

20 A No, we didn't sell that pilot. We didn't
21 want to sell that pilot. We just wanted to develop
22 that property. Gloryvision is a development company.

23 Q And did you, Ms. Bryant, ever receive any
24 sales revenue in connection with any of the development
25 that Gloryvision had done with regard to anything other

1 than Songs for Dogs and Songs for Cats?

2 A Me personally?

3 Q You personally.

4 A Yes, at different times I worked writing
5 songs, jingles. You know, I've been in the jingle
6 business for a lot of years. I was in the jingle
7 business for a lot of years using Gloryvision as a
8 company that represented me. And so there was income
9 to Gloryvision, but I don't remember how much it was.

10 It was different times. I worked through Gloryvision.

11 Q And when was the last time that you had such
12 an engagement that Gloryvision was --

13 A It was prior to 2000, because in 2000 I
14 decided instead to work through my own company. It's a
15 weird business.

16 Q Okay. And did there ever come a time that
17 you met Mr. Russ Palladino?

18 A Yes.

19 Q And when did you meet Mr. Russ Palladino?

20 A 1996.

21 Q And what was the nature of you meeting with
22 Russ Palladino?

23 A We met with him to have him be a fulfillment
24 company. I don't know if they call it fulfillment.
25 Duplications. To do the duplications for our product

1 Songs for Cats, and I think some for Songs for Dogs,
2 too.

3 Q Okay. And, Ms. Bryant, on those two lawsuits
4 that you mentioned, the one in New York State and
5 federal court, is Mr. Monaghan your counsel on those
6 cases?

7 A Yes. I'm lucky, you know.

8 Q And when was the first time you met
9 Ms. Bryant?

10 A Well -- you mean Mr. Monaghan?

11 Q I'm sorry. Ms. Bernfeld.

12 A Ms. Bernfeld. 1975, I think it was, '76.

13 Q And when was the first time that you entered
14 into a business relationship with her?

15 A Well, when we owned a business together you
16 mean?

17 Q Did you have any kind of business
18 relationship with her?

19 A Oh, yes. Ellen was the best singer in New
20 York. I hired her on virtually every job I could, you
21 know, for so many years. And I was a music producer in
22 New York and I hired musicians and singers all the
23 time, so I hired Ellen. She was on the top of my list.
24 So there was quite a lot of business that was done,
25 contracts and whatnot.

1 Q Now, after you met Mr. Palladino in 1996, did
2 you do any business with him?

3 A He worked for Europadisk and --

4 Q Europadisk?

5 A Yeah. They made, I don't know how many
6 thousand copies of Songs for Dogs, Songs for Cats. I'd
7 have to look at the paperwork. But I think that you
8 may have some of that information.

9 Q Well, what paperwork would you need to look
10 at in order to refresh your recollection?

11 A Any kind of order forms that we might have
12 had with them, like, you know, 1,000 copies or 10,000
13 copies or -- you know, something that indicates how
14 many copies you ordered and the price you paid per
15 copy.

16 Q Where would that be located?

17 A In the business files in New York.

18 Q And that's in Stony Point?

19 A Yes.

20 Q Okay. We'd request that information.

21 And were you involved with either signing the
22 agreements or issuing any purchase orders or
23 authorizing Mr. Palladino to manufacture the disks?

24 A I don't remember. I mean, that certainly was
25 part of deciding that Europadisk was the right place

1 and -- you know. I mean, there was -- I don't know
2 which one of us actually signed for it. I remember
3 picking up a large order. I signed for it probably
4 when I picked it up, but --

5 Q And when you say you picked it up, where
6 would you have picked it up?

7 A On Verex Street. It was downtown Manhattan.
8 Way downtown.

9 Q And would you have picked it up yourself or
10 would you have done it with someone else?

11 A They had a loading area. Manhattan is kind
12 of crazy, you know. But I had that Ford Explorer at
13 the time and I remember it was kind of filled up to the
14 brim with these boxes, you know, from the loading dock.
15 I don't remember that I was with anyone. You know, I
16 didn't have to lift it.

17 Q And after you picked them up, what did you do
18 with those boxes?

19 A Took them to the office. We had a loading
20 dock there, too. There's a -- it's an industrial
21 complex. They have a good loading dock and elevator
22 and dollies and whatnot. And we took it to the office
23 and --

24 Q This is in Garncerville?

25 A Yes.

1 Q Okay. And do you recall ever shipping any of
2 those products to Media Right Productions or
3 Mr. Maxwell?

4 A I remember that we had to send them one of
5 each product initially.

6 Q Okay. And do you recall if you followed up
7 by sending any additional copies to him?

8 A Yeah, I think all together we sent ten copies
9 of each in sales samples, you know.

10 Q Okay. And when you say of each, what are you
11 referring to?

12 A Of Dogs and ten copies of Cats.

13 Q The CDs?

14 A The CDs. I don't remember whether we sent
15 him any cassettes.

16 Q Okay. And do you remember a time when you
17 may have been introduced to Mr. Maxwell by
18 Mr. Palladino?

19 A I never met him until this past December, is
20 the first time I met him.

21 Q Were you ever involved with any discussions
22 regarding the role that Media Right Productions or
23 Mr. Maxwell would play in connection with Songs for
24 Dogs or Songs for Cats?

25 A The second phone call between Ellen and

1 Mr. Maxwell, I remember that phone call because I sat
2 there in the dining room where we had the speakerphone
3 and listened to it. I don't know whether I said hello
4 or not or -- I mean, I wasn't trying to be sneaky, I
5 was just listening to it. So I remember that second
6 phone call.

7 Q And did you notify or did Ms. Bernfeld notify
8 Mr. Maxwell that you were listening in to their phone
9 call?

10 A I would think I would have said hello. You
11 know, I'm not the kind of person to do something like,
12 you know. There was no reason not to say hello to him,
13 you know. We were looking forward to the whole thing.

14 Q And do you recall the discussion by
15 Mr. Maxwell regarding his discussions with The Orchard
16 and selling his products to The Orchard for
17 distribution?

18 MR. MONAGHAN: Object to the form of the
19 question as presupposing that this is true.

20 BY MR. SHELOWITZ:

21 Q You can answer it if you understand it.

22 MR. MONAGHAN: No, I object to the form.

23 Please rephrase the question. Was there such a
24 discussion, is that the question?

25 BY MR. SHELOWITZ:

1 Q You can answer my question if you understand
2 it.

3 MR. MONAGHAN: No, she can't because it's
4 objectionable. It presupposes facts which are --

5 MR. SHELOWITZ: Again, you know, the idea is
6 that if she doesn't understand it, she can say so.

7 THE DEPONENT: I don't understand your
8 question. Could you rephrase it?

9 MR. SHELOWITZ: And unless you're going to
10 direct her not to answer, your role is to state
11 your objection, and if she can answer the
12 question, she can answer it. Not to coach her,
13 not to instruct her, not to direct her not to
14 answer, and not to interfere with my conducting
15 this deposition, and that's what you've been doing
16 from the morning -- from 1:00 when we started.

17 MR. MONAGHAN: Let me know when it's my turn,
18 please, to speak.

19 MR. SHELOWITZ: Okay.

20 MR. MONAGHAN: I am here --

21 BY MR. SHELOWITZ:

22 Q Do you recall discussing Mr. Maxwell's
23 relationship with The Orchard with Mr. Maxwell and --
24 with Ms. Bernfeld on that second conversation?

25 A No.

1 Q Did you ever discuss with Ms. Bernfeld a
2 possibility that your music would be sold through third
3 parties in connection with your business with
4 Mr. Maxwell?

5 A Third parties. I don't understand what you
6 mean by that. You mean stores?

7 Q Anyone other than Mr. Maxwell directly?

8 A We wanted him to get -- to build our store
9 base. So that would be third parties, I guess; right?
10 We wanted him to build our store base. And we were
11 talking, I remember, about CD Baby and Tower Records on
12 line, the on-line sellers who sold CD products,
13 building that up. We were already with amazon.com and
14 we were with barnesandnoble.com, so we knew that there
15 were others. I remember discussing that, that he
16 discussed that and Ellen discussed that with him.

17 Q And what was -- what was your intention from
18 Mr. Maxwell's role in connection with the Songs for
19 Dogs and Songs for Cats?

20 A He was a product representative to -- and his
21 job was to expand the store base and the different
22 catalogs. Maybe home shopping networks I think we were
23 talking about with him.

24 Q And was it your understanding that
25 Mr. Maxwell was authorized by Media Productions to

1 represent the Songs for Dogs and Songs for Cats in
2 connection with those activities?

3 A He was authorized to represent the product,
4 the products, the gift products, the physical products,
5 but he wasn't authorized to fulfill anything himself.
6 Had to come back to us for everything. He is a sales
7 rep.

8 Q And what's your understanding of a sales
9 rep's responsibilities?

10 A Goes out and stimulates sales, can take
11 orders, but we fulfill them.

12 Q And what is that understanding based on,
13 Ms. Bryant?

14 A Well, I've been dealing with sales reps my
15 whole career. That's always the way it works for me.
16 I have had sales reps in the jingle business. And, for
17 example, they can bring in a client, but they can't
18 bind me to an agreement. They can -- they get a piece
19 of the action. They tell me about the job and it's my
20 job to do the job.

21 Q I'd like to direct your attention,
22 Ms. Bernfeld, to a document which has been marked --

23 A Bryant.

24 Q Ms. Bryant, a document which has been marked
25 -- it was Maxwell Exhibit 3, which is a Product

1 Representation Agreement.

2 A Oh, yes.

3 MR. SHELOWITZ: Counsel, if you can please
4 show that to her.

5 THE DEPONENT: I see it. Thank you. I'm
6 looking at it.

7 BY MR. SHELOWITZ:

8 Q Okay. And I'd like to direct your attention
9 to the -- from the top of the agreement.

10 Well, first of all, have you seen this
11 document before?

12 A Yes.

13 Q When was the first time you saw that?

14 A Around 2000, maybe a little before.

15 Q Did you discuss this -- the contents of this
16 agreement with Ms. Bernfeld prior to her signature of
17 the document?

18 A Yes. We also ran it by her dad who was a
19 very fine businessman.

20 Q And did you recommend any changes to be made
21 to this document prior to its signature?

22 A I don't know that he made any changes. I
23 think he wanted -- Ellen wrote a little thing at the
24 end. That might have been her -- Bernfeld's
25 recommendation.

1 Q Okay. And what were your expectations from
2 this agreement, if any?

3 A Well, my best hopes would be that Mr. Maxwell
4 was able to expand our store base. Cats was newer than
5 Dogs. There were some opportunities that automatically
6 existed there to take the existing store base and start
7 to introduce the second product in, and that he could
8 get us connected possibly with home shopping and more
9 catalogs than we had been. We were in a couple of
10 really wonderful catalogs, but there were many others.
11 And generally expand our sales, you know.

12 Amazon and Barnes & Noble were good, but
13 everybody was saying that CD Baby was very good. We
14 were interested in that. And Tower Records on line. I
15 think Tower Records is gone now. But we were hoping he
16 could stimulate more customers for us.

17 Q All right. And did you ever notify
18 Mr. Maxwell or Media Productions -- Media Right
19 Productions at any time that the contract was no longer
20 in effect?

21 A No, it's -- there's a time limit placed in
22 the contract. It's a term.

23 Q Did you ever notify him of that?

24 A Why do I have to notify him of that? Doesn't
25 it say 36 months unless it's terminated sooner?

1 Q And whose idea was it to commence this
2 lawsuit, Ms. Bryant?

3 A It was ours.

4 Q And who is "ours"?

5 A Oh, I'm sorry. Ellen and mine.

6 Q And why did you decide to commence this
7 lawsuit?

8 MR. MONAGHAN: Just look in the complaint.

9 MR. SHELOWITZ: Again, I'm going to object
10 again for that needless interruption.

11 Can you please read back the question,
12 Ms. Court Reporter, for the witness?

13 (The last question was read back by the court
14 reporter.)

15 THE DEONENT: Because we owned every single
16 thing about this product and we never authorized
17 anyone to give it away to anyone. We would have
18 never agreed to on-line distribution of a gift
19 product. We would have never agreed to have our
20 prices changed by other people, to have our
21 product dismembered into single-song downloads,
22 and to have our copyrights and trademarks
23 infringed by someone. That's why --

24 BY MR. SHELOWITZ:

25 Q And --

1 MR. MONAGHAN: Wait. You're interrupting her
2 answer.

3 THE DEONENT: That's why we commenced this
4 lawsuit.

5 BY MR. SHELOWITZ:

6 Q And if we could go -- in the complaint
7 there's a claim for trademark infringement, you just
8 mentioned that. Have you ever applied for a federal
9 trademark for anything ever?

10 A No.

11 Q And so what is the basis for claiming that
12 there is a trademark?

13 A We used it in interstate commerce for many,
14 many years.

15 Q Used what?

16 A We used the marks, the distinctive marks of
17 Songs for Dogs and Songs for Cats and Gloryvision and
18 our logos and our print and our pictures all to
19 represent this product, which has had many copycats
20 now, but it represented our company and our brand all
21 over the United States and in Canada, even in Europe,
22 and for how many years running now?

23 Q And so are you saying, Ms. Bryant, that the
24 words to Songs for Cats is a trademark?

25 A It's a mark. It's definitely a mark. And as

1 used, as printed, as pictured in combination with these
2 different fonts and graphic designs, I'd say it's a
3 mark.

4 Q Okay.

5 A I mean, I've seen Songs for Irish Dogs, but
6 nobody's done Songs for Dogs.

7 Q Are you saying that someone who has songs for
8 Irish dogs would be infringing your trademark?

9 A No, I think somebody would -- if we wanted to
10 do something, you know, and they said I've got to find
11 a way to not do what Anne's doing.

12 Q Okay. So just help me to understand the
13 trademarks that you claim are being infringed so, you
14 know, we can understand what the basis of your claims
15 are because so far we're not very clear on that.

16 MR. MONAGHAN: Well, you're apparently not
17 paying much attention.

18 BY MR. SHELOWITZ:

19 Q Well, why don't you help us, Ms. Bryant, by
20 telling us since you're the Plaintiff in this case what
21 precise trademarks you claim are being infringed and
22 how.

23 A All right. Just a minute.

24 Q And we'll take them one by one so the court
25 reporter can get it down.

1 A As I write it in my book, the names,
2 likenesses and marks of the characters Big Daddy, Queen
3 Maxine, Queen Maxine & The Mutts, Wheels -- I'm
4 answering you -- Sneakers, Eartha, Chi-Chi and Waylon,
5 The Bone Lady, Little Mommie and Big Mommie are the
6 exclusive property of Gloryvision.

7 Q Listen to me. Okay? We have to --

8 A All rights reserved there.

9 (Overlapping speech.)

10 Q So that the court reporter can take it down
11 and so I can understand what your claim is. And I
12 don't -- let's start with Songs for Cats. And if you
13 can tell me again -- you've never applied for a federal
14 trademark, so that means -- is it correct that there
15 are no federal trademark registrations for anything
16 that you own through yourself or Gloryvision?

17 A I claim it from use.

18 Q Okay. So there's no federally registered
19 trademarks.

20 And if you can tell me what individually,
21 again, what marks you claim are being infringed and
22 how. And do it slowly so that we can understand, so
23 the court reporter can take it down, so that I can
24 understand what it is, we would appreciate it.

25 A Okay. As written on the face page of the

1 Songs for Dogs book and elsewhere in our products, it
2 says the names, likenesses and marks of the characters
3 Big Daddy, Queen Maxine, Queen Maxine & The Mutts, The
4 Puppy Parents, Wheels, Sneakers, Eartha, Chi-Chi,
5 Waylon, The Bone Lady, Little Mommie and Big Mommie are
6 the exclusive property of Gloryvision, Limited, all
7 rights therein are reserved.

8 P&C copyrights, it's Phono Record and --
9 copyright 1994 and 1995. Anne Bryant and Ellen
10 Bernfeld, all rights reserved. Copyright 1995.
11 Gloryvision, all rights reserved.

12 Q Okay. Again, I'm asking for the trademarks
13 that you're asserting are being infringed.

14 A Well, I gave you the mark.

15 Q So are you saying that anyone who uses the
16 name Big Daddy is infringing your trademark?

17 A Well, look at the very top where it says
18 Songs for Dogs TM.

19 Q I'm asking you do you believe that if anyone
20 else uses the words Big Daddy, that they're infringing
21 your trademark?

22 A Within the context of my product. In
23 connection with my songs that Big Daddy sings, you bet.

24 Q Okay. So anyone using the words Queen Maxine
25 related to a song you would say is infringing your

1 trademark?

2 A Related to a song that is that song that
3 Queen Maxine sings, you bet.

4 Q Okay. And with regard for a copyright
5 infringement claim, can you describe what the basis of
6 that claim is?

7 A All right. Mr. Maxwell took a copy. He had
8 CD copies. And as you probably know, or may know, any
9 CD is a digital copy. So he took copies of our product
10 that we supplied to him as a sample and uploaded,
11 copied them by uploading them to Orchard, a master
12 server and distributor of digital content. And
13 therein, that act, he committed copyright infringement.
14 And it was serious copyright infringement because it
15 went to a master hub server, The Orchard, that got it
16 out to digital stores all over the world.

17 Q Now, if the result of what you just described
18 resulted in royalty revenue for you, would you still
19 believe that that was copyright infringement?

20 A I would have been furious.

21 Q You would have been furious if you were
22 earning royalties as --

23 A You bet. I don't want to be -- I don't need
24 The Orchard, I don't want The Orchard, I don't want a
25 gift product on The Orchard sold in single songs. I

1 don't want somebody repricing my product. I don't want
2 anybody using little snippets and things from my
3 product and then diluting it. It's a gift product,
4 first of all, and if I wanted to sell it on the
5 Internet, I could sell it through my own site. But I
6 don't want to sell it through the Internet because who
7 wants a gift like that? It's a gift that's --

8 Q We actually looked on your site and we saw
9 that it was -- it is being sold on your site.

10 A It is not being sold on my site as a
11 download.

12 Q I would show you because there are sample
13 songs, and I even have that, and if I was in Florida, I
14 would show it to you right now.

15 A You don't have to show me. I did those
16 20-second and 14-second samples. I --

17 Q Those are actually available on the Internet.

18 A They are not through my -- I have never put
19 those things through my site. And when we were told
20 that it helps to have short snippets so people could
21 hear what the song was about, I don't think any of them
22 were longer than 15 seconds because I did the snippets
23 myself. I'm an engineer, too.

24 Q So it is available on the Internet by you by
25 your site?

1 A You cannot get a song from my site.

2 Q Can you get a snippet?

3 A Yes, you can get like a half a chorus.

4 Enough to hear what it sounds like. Oh, that sounds
5 cute, let's buy the album. That's what you can get
6 from me.

7 Q Okay. And other than what you've just
8 described in the -- what you allege to be the copying
9 and uploading of music to The Orchard, are there any
10 other bases that you have for your copyright
11 infringement claim?

12 A I think I said clearly, I just want to make
13 sure that you understand, you broke apart a product
14 that's an entertainment property. You did damage. He
15 did damage to my property.

16 Q And what was the damage?

17 A Well, I mean, what does the song mean
18 that's -- Follow The Bone Lady, unless it's in context
19 to Songs for Dogs. I mean, it means something within
20 the context of this whole story. But having
21 single-song downloads of a product that's part of an
22 entertainment property and meant to be that way, and
23 also meant to be a gift product that comes with a
24 beautiful book and excellent packaging, it's a gift to
25 people, to a dog lover. I don't want it to be sold

1 like that, and even these days when finally you can
2 get, you know, some artwork with it. I don't consider
3 that a gift.

4 Q And so in your complaint you list -- you
5 claim \$1,000,000 worth of damages. And can you tell me
6 what the basis of that \$1,000,000 claim is?

7 A Yes. I have no way of knowing how many
8 people have shared this with other people who are
9 potential customers to me. And I can tell you some of
10 my background on this. Before I --

11 Q I'd like to ask you questions and you can
12 answer my questions.

13 A I'm trying to give you an answer,
14 Mr. Shelowitz. 1990, according to the U.S. Census,
15 there were 34,000,000 American homes with more than two
16 dogs, that's three dogs or more, that we labeled dog
17 lovers.

18 Q If you'll let me ask you the questions.

19 Right now --

20 A It's a big market.

21 Q -- we're talking about a claim for
22 \$1,000,000, and you testified earlier that for the last
23 seven years you've had under \$500, if that much, in
24 sales. And so the question that I asked to you is what
25 the basis for the \$1,000,000 is?

1 A Well, we don't know how many of our sales
2 might have come to us had they not been being
3 distributed through The Orchard to anybody who shares
4 them with 40 friends. You know, that's a story on
5 downloading, too, Mr. Shelowitz. One in 40 downloads
6 is legal.

7 I have no idea how many people have this and
8 gave it to someone else and burned it and wrapped it
9 and e-mailed it and did everything else to it. But I
10 have also no idea for sure how many of those sales, you
11 multiply by 40, I have no reason to believe anything
12 Mr. Maxwell or even The Orchard says to me, so --

13 Q So when you say that, you know, you've got
14 \$1,000,000 worth of damages based on -- really you
15 don't -- you're telling us right now that you have no
16 idea whether anyone's made any money on it and you
17 certainly have not?

18 A Well, maybe it's because you were selling it
19 all over the world and I was the only one who didn't
20 know about it.

21 Q Well, if I were to tell you that the -- that
22 Media Right Productions received about \$382 from sales
23 on The Orchard, you know, what would you think that
24 your damages would be in that case?

25 MR. MONAGHAN: Object to the form of the

1 question.

2 BY MR. SHELOWITZ:

3 Q You can answer the question.

4 MR. MONAGHAN: You don't have any basis for
5 telling us that.

6 MR. SHELOWITZ: Again, you're coaching the
7 witness and you violated, you know, the Federal
8 Rules like throughout the day today.

9 MR. MONAGHAN: Take it up with the Judge. I
10 don't believe you're correct on that.

11 MR. SHELOWITZ: You can object to the form.
12 You cannot instruct her not to answer the
13 question. It's very simple. You've been doing
14 this long enough that you know the rules. Okay?
15 Every time you do that you're delaying the
16 deposition. You're coaching her, clearly. And
17 this record will go to the Judge. Okay? I'm
18 asking her a question.

19 And, court reporter, if you can please read
20 it back.

21 You can object to the form and you let her
22 answer the question. I don't have to teach you
23 the rules. I don't want to.

24 MR. MONAGHAN: You don't, and you don't know
25 the rules.

1 MR. SHELOWITZ: Okay.

2 MR. MONAGHAN: And let me just tell you this:

3 When you ask a question that presupposes something
4 as true, it's objectionable as to form. I'm not
5 going to let the witness answer a question --

6 MR. SHELOWITZ: No, you're wrong. You object
7 to form. If she can answer it, she answers it and
8 your objection is reserved. Very simple. Okay?

9 If you could read the question back, Miss.

10 (The last question was read back by the court
11 reporter.)

12 MR. MONAGHAN: Yeah, same objection. Same
13 instruction. Go ahead, call the Judge if you
14 wish.

15 MR. SHELOWITZ: What's the instruction?

16 MR. MONAGHAN: The instruction is not to
17 answer that kind of a question which presupposes
18 something as true, which we have no idea is true.

19 MR. SHELOWITZ: And so you are instructing
20 her not to answer --

21 MR. MONAGHAN: Yes, I --

22 MR. SHELOWITZ: -- not on the basis of
23 privilege, it's on the basis of an objection to
24 the form?

25 MR. MONAGHAN: I am instructing her not to

1 answer because the question is -- presupposes
2 facts which have not been established and --
3 BY MR. SHELOWITZ:

4 Q Okay. And if I were to tell you again,
5 Ms. Bryant, that Media Right Productions received \$382
6 in royalties as a result of sales of Songs for Dogs and
7 Songs for Cats music, what would you believe that your
8 damages were?

9 MR. MONAGHAN: Same objection. Same
10 instruction.

11 BY MR. SHELOWITZ:

12 Q Do you believe you would be entitled to more
13 than \$382?

14 MR. MONAGHAN: Same objection. Same
15 instruction.

16 BY MR. SHELOWITZ:

17 Q You can answer the question.

18 MR. MONAGHAN: No, she can't. I've
19 instructed her not to answer. You can pursue this
20 all you wish. We'll take it up with the Court
21 any --

22 MR. SHELOWITZ: I am. Don't worry, I am.

23 MR. MONAGHAN: Well, I'll tell you what, I'll
24 tell you what, Mr. Shelowitz, I guarantee you that
25 when this record is shown to the Court, the pages

1 upon pages of your explanations, your objections
2 to my objections will be far in excess of any
3 objections that I made on the record.

4 MR. SHELOWITZ: Listen, one thing is clear,
5 when you instruct your witness not to answer a
6 question based on objection to the form of the
7 question, that's just, you know, plainly not
8 permitted.

9 MR. MONAGHAN: Okay. Do you have another
10 question?

11 MR. SHELOWITZ: Okay. Fine.

12 BY MR. SHELOWITZ:

13 Q Ms. Bryant, when you first -- strike that.
14 When was the first time that you thought that
15 you may have a basis for some kind of a claim against
16 Media Right Productions?

17 A By accident we came upon their name, and I
18 think a copyright, and a label credit for our product
19 on amazon.com in 2006. I think it was the summer of
20 2006.

21 Q And did you ever consider simply calling
22 Mr. Maxwell and trying to understand what the story
23 was, if anything?

24 A No.

25 Q Did you ever write a letter to him?

1 A No.

2 Q And what was it exactly that you saw on the
3 Internet that --

4 A I saw Songs for Dogs, Media Right
5 Productions. Copyright Media Right Productions, I
6 believe. It's different on different ones. Some say
7 copyright Orchard. That one said copyright Media
8 Right. And it said Label: Media Right Productions.
9 Artist: Media Right Productions. Listen to the songs.
10 And then you click on that and there's all our song
11 titles. And you click on them, you hear the whole
12 song.

13 And I thought, well, this is not what I want.
14 I mean, this is not something I would authorize. Who
15 is this, Media Right Productions? Wait a minute. And
16 then it went from there, kind of looking around and
17 hunting and pecking and finding out that it was in
18 other places as well.

19 Q And when you saw that, you never directly
20 contacted either Mr. Maxwell and Media Right
21 Productions?

22 MR. MONAGHAN: Objection to the form, but
23 I'll let her answer. Asked and answered.

24 THE DEPONENT: I would not make a phone call
25 to a person who would do such a thing.

1 BY MR. SHELOWITZ:

2 Q So you assumed that he was somehow involved
3 with that?

4 A Well, at that very moment the next thing I
5 did is I looked up Songs for Cats and I saw the same
6 thing with all our songs. By the way, we never
7 received a penny from Internet streaming for anything.
8 So, you know, I played each song. Each one came
9 through. The same thing.

10 Q And, Ms. Bryant, are you a member of any
11 performing right societies?

12 A BMI.

13 Q Any others?

14 A You can only be in one.

15 Q Have you ever been in any others?

16 A No.

17 Q Have you ever been a member of ASCAP?

18 A No.

19 Q And have you ever received any royalties from
20 BMI in connection with the songs on Songs for Cats or
21 the songs from Songs for Dogs?

22 A Yes, from radio play of those songs in the
23 '90s. Every one of them was on -- had good radio play
24 during the time that Ellen was doing the interviews.
25 About 150 interviews that she did, you know, as part of

1 breaking the product on the market.

2 Q And when you say in the '90s, do you know
3 more specifically when she was doing those interviews
4 and when those were?

5 A Between -- yeah, I would say between 1994 and
6 1997, eight. 1997 or eight.

7 Q And do you recall the amount of those
8 royalties?

9 A No.

10 Q Do you know if it was more than \$500?

11 A Yes, I think it was more than \$500.

12 Q Would you say it was more than \$1,000?

13 A I would just be guessing. It was probably
14 around that.

15 Q Around \$1,000?

16 A Yeah.

17 Q And would you have any records of any such
18 royalty payments from BMI regarding the Songs for Dogs,
19 Songs for Cats?

20 A I've got to get deep into some boxes to try
21 to see if we have that, you know. We shredded -- we
22 shredded a lot of excess papers from my older
23 companies, you know, from the '80s. And I even had
24 papers from the '70s that I shredded. So I don't have
25 everything, but --

1 Q Did anyone tell you to shred those documents?

2 A My basement was telling me to shred them.

3 There was like too much stuff.

4 MR. SHELOWITZ: I think now is a good time to
5 take a ten-minute break.

6 THE DEONENT: Okay.

7 MR. SHELOWITZ: And I'll dial back in in ten
8 minutes.

9 (Break.)

10 BY MR. SHELOWITZ:

11 Q Who is paying the legal expenses in
12 connection with this lawsuit?

13 MR. MONAGHAN: I don't think that's a proper
14 question, so -- it's attorney-client and I
15 instruct her not to answer.

16 MR. SHELOWITZ: What's attorney-client about
17 expenses?

18 MR. MONAGHAN: The financial relationship
19 between the Plaintiffs and myself and my law firm
20 is a matter of privilege.

21 MR. SHELOWITZ: I don't agree to that. I
22 mean, if -- either you're not paying or somebody's
23 paying or nobody's paying. I mean, I don't think
24 there's anything privileged about that.

25 MR. MONAGHAN: Okay. Well, you'll have to

1 convince the Judge of that.

2 MR. SHELOWITZ: Excuse me?

3 MR. MONAGHAN: You'll have to convince the
4 Judge of that at some point if you pursue the
5 line, because I'm telling Ms. Bryant that I don't
6 want her to answer questions about how the
7 litigation is financed.

8 I mean, I've been doing this for 36 years. I
9 don't remember ever being -- ever asking anybody
10 else on the other side how the case was financed.
11 I don't think it's relevant.

12 MR. SHELOWITZ: I'm just asking who's paying
13 the bills.

14 MR. MONAGHAN: I know you're just asking, but
15 you're just asking an irrelevant and privileged
16 question. So let's not debate it, let's move to
17 the next question. You can take it up with the
18 Court.

19 BY MR. SHELOWITZ:

20 Q Is this case a contingency matter?

21 MR. MONAGHAN: Same objection. Same
22 instruction.

23 MR. SHELOWITZ: Okay. Well, on that note we
24 have no further questions, although, again, we
25 reserve the right to call Ms. Bryant back based on

1 further discovery, which it's apparent that
2 discovery as to document production is incomplete.
3 And we're going to make the same request that we
4 made in Ms. Bernfeld's, that, Ms. Bryant, please
5 respond to the document production request that we
6 had served upon your counsel.

7 Thank you for your time.

8 MR. MONAGHAN: Okay. Before we go I want to
9 put a statement on the record. Bear in mind that
10 the Lanham Act has a provision for statutory
11 damages because it recognizes the difficulty
12 sometimes in proving actual damages so that --
13 much of the documentation you have requested
14 relates to the actual damage component of the case
15 when, in fact, it may be that the Plaintiffs will
16 elect statutory damages. So we will take your
17 request under advisement, provide as much
18 information as we can and -- which is required
19 under the rules.

20 Now, the next question I have for you,
21 Mr. Shelowitz, is when are we going to have the
22 deposition of the client, The Orchard, your client
23 The Orchard?

24 MR. SHELOWITZ: We've already confirmed it.

25 Michael confirmed it before the Judge in Court --

1 MR. MONAGHAN: Okay.

2 MR. SHELOWITZ: -- as the 21st. And he stood
3 up and he said to the Judge we hereby confirm
4 we're taking The Orchard's deposition on
5 February 21st.

6 MR. MONAGHAN: Okay. That's fine. Thank you
7 very much. And please don't interpret anything
8 here as acknowledging that you have a right to a
9 further deposition. But we can take that up later
10 after we seek in good faith to produce whatever
11 additional documents may be relevant to the case.

12 MR. SHELOWITZ: Thank you. And responsive to
13 the request.

14 MR. MONAGHAN: And responsive to the request
15 to the extent that the request requires a
16 response. But we're going to do our best even to
17 go overboard to give you as much as we can given
18 the fact that this is a matter that is many years
19 old by now, so --

20 MR. SHELOWITZ: Thank you very much.

21 MR. MONAGHAN: Thank you.

22 THE COURT REPORTER: Mr. Shelowitz, do you
23 want to order these transcripts today?

24 MR. SHELOWITZ: Yes.

25 THEREUPON, the deposition of ANNE BRYANT, taken

1 at the instance of the Defendants, was concluded at
2 5:30 p.m.

3

4 Note: The original of the foregoing deposition will be
5 held by Mr. Shelowitz. A copy will be provided to
6 Mr. Monaghan by Mr. Shelowitz.

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1 DEPONENT'S ERRATA SHEET AND SIGNATURE INSTRUCTIONS

2 The original of the Errata Sheet has been
3 delivered to Attorney Shelowitz, Counsel for Defendants.

4 When the Errata Sheet has been completed by the
5 Deponent and signed, a copy thereof should be delivered
6 to each party of record and the ORIGINAL delivered to
7 Attorney Shelowitz, Counsel for Defendants, to whom the
8 original deposition transcript was delivered.

9

10 INSTRUCTIONS TO DEPONENT

11 After reading this volume of your deposition,
12 indicate any corrections or changes to your testimony and
13 the reasons therefor on the Errata Sheet supplied to you
14 and sign it. DO NOT make marks or notations on the
15 transcript volume itself.

16

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1 ATTACH TO THE DEPOSITION OF ANNE BRYANT
2 CASE: BRYANT, BERNFELD vs. EUROPADISK, et al.
2 CASE NO.: 07-CV3050(CLB)

3 ERRATA SHEET

4 I, ANNE BRYANT, have read the foregoing
5 deposition given by me on Wednesday, February 13, 2008,
6 in Sarasota, Florida, and the following corrections, if
7 any, should be made in the transcript:

8 PAGE# LINE# CORRECTION AND REASON THEREFOR

9

10

11

12

13

14

15

16

17 Under penalties of perjury, I declare that I
18 have read the foregoing document and that the facts
19 stated in it are true.

20 SIGNED at _____, Florida, this ____
21 day of _____, 20 ____.

22

23

24 ANNE BRYANT

25

1 CERTIFICATE OF REPORTER OATH
2

3 STATE OF FLORIDA
4

COUNTY OF SARASOTA
5
6

I, the undersigned authority, hereby certify
that the witness named herein personally appeared before
me and was duly sworn.
10

11 WITNESS my hand and official seal this
12 FEB 13 2008
13

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16
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18 
Leihla Collins, RPR
19 NOTARY PUBLIC - STATE OF FLORIDA
MY COMMISSION NO. DD 565946
20 EXPIRES: July 11, 2010
SCLAFANI WILLIAMS COURT REPORTERS, INC.
21

22 LEIHLA COLLINS
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # DD565946
EXPIRES 7/11/2010
23 BONDED THRU 1-866-NOTARY1
24

25

1 REPORTER'S DEPOSITION CERTIFICATE

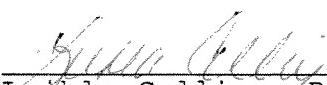
2 STATE OF FLORIDA

3 COUNTY OF SARASOTA

4 I, Leihla Collins, Registered Professional Reporter,
5 and Notary Public in and for the State of Florida at large,
6 hereby certify that the witness appeared before me for the
7 taking of the foregoing deposition, and that I was authorized
8 to and did stenographically and electronically report the
9 deposition, and that the transcript is a true and
10 complete record of my stenographic notes and recordings
11 thereof.

12 I FURTHER CERTIFY that I am neither an
13 attorney, nor counsel for the parties to this cause, nor
14 a relative or employee of any attorney or party
15 connected with this litigation, nor am I financially
16 interested in the outcome of this action.

17 DATED THIS FEB 13 2008 at Sarasota,
18 Sarasota County, Florida.

19
20 
21 Leihla Collins, RPR
SCLAFANI WILLIAMS COURT REPORTERS, INC.
22
23
24
25

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